

**BOARD OF APPEALS CASE NO. 5118**

**APPLICANT: Church of Christ of Bel Air**

**REQUEST: Special Exception to allow a kindergarten and school in the Agricultural District; 2529 Conowingo Road, Bel Air**

**HEARING DATE: March 19, 2001**

**\* BEFORE THE**

**\* ZONING HEARING EXAMINER**

**\* OF HARFORD COUNTY**

**\* Hearing Advised**

**\* Aegis: 2/14/01 & 2/21/01**

**\* Record: 2/16/01 & 2/23/01**

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## **ZONING HEARING EXAMINER'S DECISION**

The Applicant, Church of Christ of Bel Air, is requesting a special exception, pursuant to Section 267-53C(7)(b) and Section 267-53C(7)(c) of the Harford County Code, to allow a kindergarten and school in the Agricultural District.

The subject property is located at 2529 Conowingo Road, 450 feet south of White House Road and is more particularly identified on Tax Map 34, Grid 2-D, Parcel 331. The parcel consists of 3± acres, is presently zoned AG, Agricultural, and is entirely within the Third Election District.

Ms. Gaye Novak appeared on behalf of the Applicant and testified that she is the owner, operator and teacher at the Awakening Child Montessori School located on the subject parcel. She currently operates a day care center at the subject site and wants to go to a kindergarten set-up and potentially a first grade classroom of up to 26 children. The witness testified that there will be no additional employees added to her staff and did not believe that there would be any adverse impacts on traffic by this addition of children. The current number of children at the school is 20, and she does not anticipate that number to grow rapidly. She does anticipate a cap of 26 children.

Upon questioning by the Hearing Examiner, the witness indicated that she had no errors or corrections to point out regarding the Staff Report prepared by the Department of Planning and Zoning, and adopted that report as part of her own testimony under the facts of this case.

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The Department of Planning and Zoning issued its report in this case on February 14, 2001 and, in recommending approval of the special exception request in this case, the Department examined that provisions of Section 267-9I of the Harford County Code, entitled “Limitations, Guides and Standards”, as well as the specific provisions to operate a kindergarten in Harford County, found at Section 267-53C(7)(b) and (c) of the Code. The Department found that the density of 20-26 students would meet the density criteria of 20,000 square feet for 15 students or fraction thereof. The Department also found that there was sufficient frontage of 100 feet, there being 317.79 feet of frontage on Conowingo Road. Additionally, the kindergarten could meet the front yard depth, the side yard depth, and the rear yard depths required by the Code.

In addition to the requirements to operate a kindergarten discussed above, the Department of Planning and Zoning also examined the provisions of Section 267-53C(7)(c) of the Harford County Code, which applies to all other schools other than a kindergarten.

In examining the provisions of the Code in regard to an operation other than a kindergarten, the Department found that a density exceeding 20,000 square feet per 15 students or fraction thereof could be met. The Department also found that there was sufficient frontage. The Code requires 150 feet and there is 317.79 feet existing. The front yard, side yard, and rear yard setbacks could also be met for schools other than a kindergarten.

The Department went on to examine all the “Limitations, Guides and Standards” of Section 267-9I and found no adverse conditions related thereto. In conclusion, the Department recommended approval.

### **CONCLUSION:**

The Applicant is requesting a special exception, pursuant to Section 267-53C(7)(b) and Section 267-53C(7)(c) of the Harford County Code, to allow a kindergarten and school in the Agricultural District.

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These sections provide:

**(b) Kindergartens must have:**

- [1] A parcel area of at least twenty thousand square feet per fifteen students or fraction thereof.**
- [2] A parcel frontage of at least one hundred feet.**
- [3] A front yard depth of at least forty feet, a side yard depth equal to at least the height of the tallest institutional building located on the parcel which is proximate to the side yard and a rear yard depth of at least forty feet.**

**(c) All other educational institutions must comply with the following:**

- [1] Where the maximum attendance at any one time does not exceed forty students, such institution must have:**
  - [a] A parcel area of at least twenty thousand square feet per fifteen students or fraction thereof.**
  - [b] A parcel frontage of at least one hundred fifty feet.**
  - [c] A front yard depth of at least forty feet, a side yard depth equal to at least the height of the tallest institutional building located on the parcel which is proximate to the side yard and a rear yard depth of at least forty feet.**

**Section 267-51 provides:**

**Purpose.**

**Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of this Part 1.**

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**Section 267-52 provides:**

**General regulations.**

- A. Special exceptions require the approval of the Board in accordance with Section 267-9, Board of Appeals. The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part 1 and the public health, safety and welfare.**
- B. A special exception grant or approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.**
- C. Extension of any use or activity permitted as a special exception shall require further Board approval.**
- D. The Board may require a bond, irrevocable letter of credit or other appropriate guaranty as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.**
- E. In the event that the development or use is not commenced within three (3) years from date of final decision after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Zoning Administrator shall have the authority to extend the approval for an additional twelve (12) months or any portion thereof.**

**The following is a review of Section 267-9I, and comments of the Department of Planning and Zoning regarding each subsection:**

**“Limitations, guides and standards. In addition to the specific standards, guidelines and criteria described in this Part 1 and other relevant considerations, the Board shall be guided by the following general considerations. Notwithstanding any of the provisions of this Part 1, the Board shall not approve an application if it finds that the proposed building, addition, extension of building or use, use or change of use would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. The Board may impose conditions or limitations on any approval, including the posting of performance guaranties, with regard to any of the following:**

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- (1) The number of persons living or working in the immediate area.

*The present Montessori day care service is permitted on the church property without requiring special exception approval. The proposal is to expand the use to permit a Montessori school to include first grade. The request will provide a necessary service to the residents of the area and will not create any adverse impacts.*

- (2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic; and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.

*The property fronts on Conowingo Road which is a State owned arterial road. There is good sight distance in all directions from the existing entrance. The school does not employ the use of school buses. The proposal will not adversely impact traffic along this portion of U.S. Route 1.*

- (3) The orderly growth of the neighborhood and community and the fiscal impact on the county.

*Expanding the existing use to include a first grade will not have any adverse fiscal impacts on the County.*

- (4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.

*The proposed use should have no impacts based on the issues listed in this section.*

- (5) Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.

*Police protection will be provided by the County's local Sheriff's Department and the Maryland State Police. Since the property is approximately halfway between Bel Air and Dublin, fire protection will primarily be from both Bel Air and Dublin/Darlington Volunteer Fire Departments. Water and sewer will be provided by on-site well and septic system. The Applicant must obtain a private hauler to dispose of trash.*

- (6) The degree to which the development is consistent with generally accepted engineering and planning principles and practices.

*The proposed use should be compatible with other uses in the surrounding neighborhood.*

- (7) The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.

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*The proposal will not impact other institutional uses in the area.*

- (8) The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.

*The proposed use as requested is consistent with the County's Master Plan.*

- (9) The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.

*There are no environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

- (10) The preservation of cultural and historic landmarks.

*Not applicable to the request.*

The Hearing Examiner finds that the Applicant has met or exceeded all of the requirements of the Harford County Code regarding the requested special exception use. The Department of Planning and Zoning did a thorough analysis in this matter, which the Hearing Examiner adopts as findings of fact in this case; namely, that the requirements of Section 267-9I have been met, and that no adverse impacts will result from the upgrading of this use on this particular parcel from a day care to a kindergarten, including a first grade.

The Maryland Courts have addressed the question of the grant of special exceptions in Maryland and has provided the following guidance:

“The standard to be applied in reviewing a request for special exception use was set forth by the Maryland Court of Appeals in Schultz v. Pritts, 291 Md. 1, 432 A2d 1319 (1981), wherein the Court said:

...The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any facts or circumstances negating the presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

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Whereas, the Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal. (Citations omitted). These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied.” (Emphasis in original).

The Court went on to establish the following guidelines with respect to the nature and degree of adverse effect which would justify denial of the special exception:

“Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” 291 Md. At 15, 432 A.2d at 1327.

Based on all of the facts presented and applying the test set forth by the Maryland Court of Appeals, the Hearing Examiner finds that the proposed use at this location will not have any adverse impacts above and beyond the impacts normally associated with this use, regardless of its location within the zone.

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The Hearing Examiner recommends approval of the subject request, subject to the following conditions:

1. The Applicant obtain any and all necessary permits and inspections.
2. That the Applicant not exceed 26 students in attendance at any one time at this location.

Date     **APRIL 18, 2001**

**William F. Casey**  
**Zoning Hearing Examiner**